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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Steve STEWART Group Art Unit: 3751
Serial No : 10/721,515 Examiner: FETSUGA
Filed : November 24, 2003 Conf. No.: 5326
For : FOOT-OPERATED TOILET SEAT

APPEAL BRIEF

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Sir:

This Appeal Brief is being submitted after the two-month period set by 37 C.F.R. §41.37(a)(1) but within seven months of the date of the Notice of Appeal filed on December 9, 2005. Accordingly, a five-month extension of time is respectfully requested. Entry and consideration of this Appeal Brief pursuant to 37 C.F.R. §§41.37(e), 1.136(a) and 1.7(a) are earnestly solicited.

(i) Real Party in Interest

Steve Stewart, an individual and the sole inventor on this application, having a mailing address at 12300 Wilshire Blvd. #300, Los Angeles, CA 90025, is submitted and identified to be the real party of interest.

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(ii) Related Appeals and Interferences

There are no related appeals or interferences.

(iii) Status of Claims

Claims 1-7, 10, 11, 13-16, 18 and 19 are currently pending in this application. Claims 1, 18 and 19 are independent. Claims 8, 9, 12 and 17 are canceled. Independent claims 1 and 19 stand rejected under 35 U.S.C. §112, second paragraph. Claims 1, 2, 5-7, 13-16, 18 and 19 stand rejected under 35 U.S.C. §102(b). Claims 3, 4, 10 and 11 stand rejected under 35 U.S.C. §103. All currently pending claims are being appealed.

(iv) Status of Amendments

No Amendments to the claims were submitted after the most recent Final Office Action dated September 9, 2005. An invitation to resolve the issues raised in the Final Office Action of September 9, 2005 by telephonic interview was previously declined by the Examiner.

(v) Summary of Claimed Subject Matter

Independent claim 1 recites an apparatus for adjusting (see, e.g., element 10 of FIGS. 1-2 and Applicant's Specification at paragraphs 0005, 0007, 0016 and 0017) a position of a toilet seat (see, e.g., element 11 of FIGS. 1-4 and Applicant's Specification at paragraphs 0002, 0005-0008, 0016-0018, 0022-0024 and 0030) of a toilet (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0002, 0005-0006, 0009, 0016, 0019 and 0025) having a left side (see, e.g., Applicant's Specification at paragraph 0025), a right side (see, e.g., FIGS. 1 and 2 and

Applicant's Specification at paragraph 0025), a bowl (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0007, 0008, 0016, 0019 and 0023) disposed between the left side and the right side toward a front of the toilet, and a tank (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0007, 00016 and 0019) disposed between the left side and the right side toward a rear of the toilet. The apparatus comprises a first bracket (see, e.g., element 21 of FIGS. 3-5 and Applicant's Specification at paragraphs 0019-0021 and 0024) and a second bracket (see, e.g., element 22 of FIGS. 3-5 and Applicant's Specification at paragraphs 0019-0021 and 0024) for being disposed between a tank and a bowl of a toilet, the first bracket further for being disposed on a left side of the toilet and the second bracket further for being disposed on a right side of the toilet. The apparatus further comprises a first geared shaft (see, e.g., element 25 of FIGS. 3-5 and Applicant's Specification at paragraphs 0006-0007, 0020-0021, 0023, 0024, 0026, 0028 and 0030), disposed between the first and second brackets closer to the tank than the bowl, the first geared shaft operative to rotate in response to a depression of a lever (see, e.g., element 13 of FIGS. 1, 2 and 5 and Applicant's Specification at paragraphs 0006-0007, 0016, 0020, 0023, 0025, 0027 and 0029-0030) disposable on either a left end or a right end of the first geared shaft (see, e.g., Applicants Specification at paragraph 0025). The apparatus further comprises a second geared shaft (see, e.g., element 29 of FIGS. 3-5 and Applicant's Specification at paragraphs 0006-0007, 0020-0024, 0026, 0028 and 0030), disposed between the first and second brackets closer to the bowl than the tank, and operatively engaged with the first geared shaft such that a rotation of the first geared shaft causes a rotation of the second geared shaft (see, e.g., elements 25 and 29 of FIGS. 3-5 and Applicant's Specification at paragraph 0023). Additionally, the apparatus comprises a flange (see, e.g., element 18 of FIGS. 1-5 and

Applicant's Specification at paragraphs 0016, 0022, 0023, 0028 and 0032) secured along the second geared shaft, the flange for attachment to a toilet seat to adjust a position thereof in response to the rotation of the second geared shaft (see, e.g., elements 25 and 29 of FIGS. 3-5 and Applicant's Specification at paragraph 0023).

Independent claim 18 recites a toilet (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0002, 0005-0006, 0009, 0016, 0019 and 0025) having a left side (see, e.g., Applicant's Specification at paragraph 0025), a right side (see, e.g., FIGS. 1 and 2 and Applicant's Specification at paragraph 0025), a bowl (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0007, 0008, 0016, 0019 and 0023) disposed between the left side and the right side toward a front of the toilet, a toilet seat (see, e.g., element 11 of FIGS. 1-4 and Applicant's Specification at paragraphs 0002, 0005-0008, 0016-0018, 0022-0024 and 0030) positioned over the bowl, and a tank (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0007, 00016 and 0019) disposed between the left side and the right side toward a rear of the toilet. The toilet further comprises a foot operated mechanism (see, e.g., element 10 of FIGS. 1-2 and Applicant's Specification at paragraphs 0005, 0007, 0016 and 0017) disposed between a tank and a bowl of the toilet. The foot operated mechanism comprises a first bracket (see, e.g., element 21 of FIGS. 3-5 and Applicant's Specification at paragraphs 0019-0021 and 0024) disposed on the left side of the toilet, a second bracket (see, e.g., element 22 of FIGS. 3-5 and Applicant's Specification at paragraphs 0019-0021 and 0024) disposed on the right side of the toilet, a first geared shaft (see, e.g., element 25 of FIGS. 3-5 and Applicant's Specification at paragraphs 0006-0007, 0020-0021, 0023, 0024, 0026, 0028 and 0030) disposed between the first and second brackets closer to the tank than the bowl and having a lever (see, e.g., element 13 of

FIGS. 1, 2 and 5 and Applicant's Specification at paragraphs 0006-0007, 0016, 0020, 0023, 0025, 0027 and 0029-0030) disposed on at least one side for providing torque to rotate the first geared shaft (see, e.g., Applicant's Specification at paragraph 0023). The foot operated mechanism also comprises a second geared shaft (see, e.g., element 29 of FIGS. 3-5 and Applicant's Specification at paragraphs 0006-0007, 0020-0024, 0026, 0028 and 0030) disposed between the first and second brackets closer to the bowl than the tank and operatively engaged with the first geared shaft such that a rotation of the first geared shaft in a first direction causes a rotation of the second geared shaft in an opposite direction (see, e.g., Applicant's Specification at paragraph 0023). Finally, the foot operated mechanism comprises a flange (see, e.g., element 18 of FIGS. 1-5 and Applicant's Specification at paragraphs 0016, 0022, 0023, 0028 and 0032) secured along the second geared shaft, the flange further attached to the toilet seat for adjusting a position thereof over the bowl in response to the rotation of the second geared shaft (see, e.g., Applicant's Specification at paragraph 0023).

Independent claim 19 recites a method for adjusting a position (see, e.g., Applicant's Specification at paragraph 0023) of a toilet seat (see, e.g., element 11 of FIGS. 1-4 and Applicant's Specification at paragraphs 0002, 0005-0008, 0016-0018, 0022-0024 and 0030) of a toilet (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0002, 0005-0006, 0009, 0016, 0019 and 0025) having a left side (see, e.g., Applicant's Specification at paragraph 0025), a right side (see, e.g., FIGS. 1 and 2 and Applicant's Specification at paragraph 0025), a bowl (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0007, 0008, 0016, 0019 and 0023) disposed between the left side and the right side toward a front of the toilet, and a tank (see, e.g., FIGS. 1-2 and Applicant's Specification at paragraphs 0007, 00016 and 0019)

disposed between the left side and the right side toward a rear of the toilet. The method comprises (a) depressing a foot operated lever (see, e.g., element 13 of FIGS. 1, 2 and 5 and Applicant's Specification at paragraphs 0006-0007, 0016, 0020, 0023, 0025, 0027 and 0029-0030) to raise a toilet seat, the foot operated lever attached to a first geared shaft that rotates a second geared shaft (see, e.g., elements 25 and 29 of FIGS. 3-5 and Applicant's Specification at paragraph 0023), the first and second geared shafts disposed between the tank and the bowl of the toilet, the first and second geared shafts secured between a first bracket (see, e.g., element 21 of FIGS. 3-5 and Applicant's Specification at paragraphs 0019-0021 and 0024) disposed on the left side of the toilet and a second bracket disposed (see, e.g., element 22 of FIGS. 3-5 and Applicant's Specification at paragraphs 0019-0021 and 0024) on the right side of the toilet, the second geared shaft having a flange attached to the toilet seat. The method finally comprises releasing the foot operated lever to lower the toilet seat (see, e.g., Applicant's Specification at paragraph 0023).

(vi) Grounds of Rejection to be Reviewed on Appeal

Independent claims 1 and 19 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention, namely that it is unclear whether a "toilet" is part of the claimed combination.

Claims 1, 2, 5-7, 13-16, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,705,330 to Knudsen (hereinafter "Knudsen").

Claims 3 and 4 stand rejected under 35 U.S.C. §103(a) as being obvious under Knudsen in view of U.S. Patent No. 1,863,682 to Alberts (hereinafter "Alberts").

Claims 10 and 11 stand rejected under 35 U.S.C. §103 as being obvious under Knudsen.

The Specification stands objected to as "failing to provide antecedent basis for the claimed subject matter" recited in the preambles of claims 1, 18 and 19.

(vii) Argument

(a) Rejection of Independent Claims 1 and 19 under 35 U.S.C. §112, second paragraph

Independent claims 1 and 19 will be argued separately with respect to this rejection.

The Examiner has rejected claims 1 and 19 under 35 U.S.C. §112, second paragraph, as "failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention" with regard to whether the toilet is part of the claimed combination.

In response thereto, the Applicant has previously amended the language of claim 1 in accordance with the Examiner's suggested language in paragraph 2 of the Office Action dated February 10, 2005. In addition to adopting the proposed language "for being disposed on" or "disposable on," the Applicant has further defined left and right sides of a conventional toilet, in response to comments from the Examiner at paragraph 4, page 4 of the Office Action dated February 10, 2005. Accordingly, Applicant believes that the relationship of the toilet and the Applicant's apparatus is particularly pointed out and distinctly claimed due to such amendments, and that this makes the recitation of a toilet a positive element of these claims.

The Applicant does not believe that this rejection is applicable to method claim 19, due to its nature as a method claim. Nonetheless, to the extent that this method must be performed in

conjunction with a toilet having the recited apparatus, the Applicant has amended claim 19 in a manner similar to claim 1. Accordingly, reversal of this rejection of claim 19 is likewise respectfully requested.

(b) Rejection of Claims 1, 2, 5-7, 13-16, 18 and 19 under 35 U.S.C. §102(b)

Claims 1, 2, 5-7, 13-16, 18 and 19 will be argued together with respect to this rejection.

The Examiner has rejected claims 1, 2, 5-7, 13-16, 18 and 19 under 35 U.S.C. §102(b) in view of U.S. Patent No. 2,705,330 to Knudsen. These rejections have each been overcome by the following amendments entered to the Applicant's independent claims 1, 18 and 19 herein, in which variations of the following recitations have been entered:

(i) a toilet having a left side, a right side, a bowl disposed between the left side and the right side toward a front of the toilet, and a tank disposed between the left side and the right side toward a rear of the toilet; and

(ii) a first bracket and a second bracket disposed between a tank and a bowl of a toilet, the first bracket disposed on a left side of the toilet and the second bracket disposed on a right side of the toilet.

Claims 1 and 18 further recite that a lever is disposable on either a left end or a right end of the first geared shaft.

Claims 1, 18 and 19 as amended are neither taught nor suggested by any of the prior art of record, or by any combination of the teachings of the same.

Knudsen does not teach or suggest the placement of a first bracket on a left side of the toilet and a second bracket on the right side of the toilet, and between the tank and the bowl

thereof, as now recited. It will be appreciated that these brackets then secure both geared shafts along the entire width of the bowl, and not just on one side thereof, as previously argued by the Examiner. Applicant asserts that Knudsen in particular does not show or suggest such placement of the brackets, since the entire apparatus of Knudsen is disposed entirely on one side of the toilet (see Fig. 2 of Knudsen and Col. 1, lines 51-55 thereof). Knudsen admits that his apparatus is disposable only on "either the right or left hand side of the bowl" (see, Col. 1, lines 51-55 of Knudsen).

In addition, Knudsen does not teach or suggest the use of two separate geared shafts as recited by the Applicant in elements (i) and (ii). While the references do teach use of simple gears, geared shafts are distinguishable in that their width, which must extend substantially both sides of a toilet, greatly exceeds their radius. (see FIGS. 3-5 of the Specification and related discussion). Gears, on the other hand, typically have a radius that is greater than their width. The use of geared shafts, and not simple gears, contributes to the durability of the Applicant's design, as referenced in paragraph 0009 of the Specification. Since the Applicant's apparatus has ends on both sides of the toilet, the lever used to raise and lower the toilet seat is attachable to Applicant's geared shaft at either a left side or a right side thereof as desired (see, e.g., Applicant's Specification at paragraph 0025). As one of ordinary skill in the art will readily appreciate, placement of the lever on either side of the toilet may therefore be accomplished without having to reposition the entire apparatus, as with prior designs. Thus, the length of geared shafts are a distinction of the common gears in the Knudsen, which shows common gears and the brackets therefore disposed on one side of a toilet only. In addition, such placement of the Applicants' brackets on opposing (left and right) sides of the toilet provides several

advantages and improvements thereover, including, in various embodiments, the ability to place the lever on either end of the geared shaft (and thereby, the toilet) without having to disconnect and reconnect the entire apparatus from one side of the toilet to the other.

In light of the foregoing, reversal of this rejection of claims 1, 18 and 19 under 35 U.S.C. §§102(b) is respectfully requested. Reversal of the rejection of each remaining dependent claim is likewise earnestly solicited based on their ultimate dependency of one the independent claims.

(c) Rejection of Claims 3 and 4 under 35 U.S.C. §103

Claims 3 and 4 will be argued together with respect to this rejection.

The Examiner has rejected claims 3 and 4 under 35 U.S.C. §102(b) under Knudsen in view of U.S. Patent No. 1,863,682 to Alberts.

Claims 3 and 4 depend from independent claim 1 and incorporate the recitations thereof. Applicant therefore resubmits the arguments in section (b) above in support of claims 3 and 4 with respect to Knudsen.

Alberts does not cure this defect in the teachings of Knudsen, as it too is devoid of teachings or suggestions of placement of separate brackets securing geared shafts at opposing sides of a toilet between the tank and the bowl. Alberts also teaches placement of his gears and the brackets therefor on only one side of the toilet (see, e.g., FIGS. 1 and 2 of Alberts).

Accordingly, neither Knudsen nor Alberts, or a combination of the same, teach or suggest the incorporated elements of claims 3 and 4. Reversal of the final rejection of claims 3 and 4 on those grounds is therefore respectfully requested.

(d) Rejection of Claims 10 and 11 under 35 U.S.C. §103

Claims 10 and 11 will be argued together with respect to this rejection.

The Examiner has rejected claims 10 and 11 under 35 U.S.C. §103(a) in view of Knudsen.

Claims 10 and 11 ultimately depend from independent claim 1 and incorporate the recitations thereof. Applicant therefore resubmits the arguments in section (b) above in support of claims 10 and 11 with respect to Knudsen.

Reversal of the final rejection of claims 10 and 11 on those grounds is therefore respectfully requested.

(e) Objection to Specification as "failing to provide antecedent basis for the claimed subject matter" recited in the preambles of claims 1, 18 and 19

The Examiner has objected to the Specification as failing to support the preamble recitations of independent claims 1, 18 and 19. Applicants readily disagree. Support for all recitations based on the Specification, including preamble recitations of each of independent claims 1, 18 and 19, have been provided above in section (v). Those citations are renewed herein in response to this objection.

"The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims." MPEP §2163.04. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. Applicant readily submits that the Examiner has failed to meet his burden of establishing why one of ordinary skill in the art will not recognize the elements of the preamble recitations of

claims 1, 18 and 19 within the Figures and Specification of the instant application. Accordingly, reversal of this objection to the Specification is respectfully requested.

Applicant affirms that the prior art of record fails to anticipate or render obvious a foot-operated toilet seat as recited in the current claims, and that the Specification readily supports the subject matter of such claims. Accordingly, Applicants request that the Board overturn the standing objections and rejections of all pending claims for the reasons provided herein.

Respectfully submitted,

By: 

Dated: July 10, 2006

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(viii) Claims Appendix

The following are the claims involved in the appeal:

Claim 1. An apparatus for adjusting a position of a toilet seat of a toilet having a left side, a right side, a bowl disposed between the left side and the right side toward a front of the toilet, and a tank disposed between the left side and the right side toward a rear of the toilet, the apparatus comprising:

a first bracket and a second bracket for being disposed between a tank and a bowl of a toilet, the first bracket further for being disposed on a left side of the toilet and the second bracket further for being disposed on a right side of the toilet;

a first geared shaft, disposed between the first and second brackets closer to the tank than the bowl, the first geared shaft operative to rotate in response to a depression of a lever disposable on either a left end or a right end of the first geared shaft;

a second geared shaft, disposed between the first and second brackets closer to the bowl than the tank, and operatively engaged with the first geared shaft such that a rotation of the first geared shaft causes a rotation of the second geared shaft; and

a flange secured along the second geared shaft, the flange for attachment to a toilet seat to adjust a position thereof in response to the rotation of the second geared shaft.

Claim 2. The apparatus of claim 1, further comprising:

a lever attached to one side of the first geared shaft.

Claim 3. The apparatus of claim 2, the lever further comprising an upper portion and a separate lower portion of smaller diameter for fitting within an end of the upper portion.

Claim 4. The apparatus of claim 3, the upper portion including a screw disposed to secure the lower portion at a desired position within the upper portion.

Claim 5. The apparatus of claim 2, the lever further comprising a foot pedal.

Claim 6. The apparatus of claim 5, wherein the foot pedal is disposed above a floor when the apparatus is mounted to the toilet.

Claim 7. The apparatus of claim 1, further comprising:
a plate for placement on the toilet between the bowl and the tank; and
the first and second brackets disposed on the plate for securing the first geared shaft and the second geared shaft on the toilet.

Claim 8. (canceled)

Claim 9. (canceled)

Claim 10. The apparatus of claim 1, wherein the first geared shaft and the second geared shaft have a 1:1 gear ratio.

Claim 11. The apparatus of claim 1, wherein the first geared shaft and the second geared shaft have a 2:1 gear ratio.

Claim 12. (canceled)

Claim 13. The apparatus of claim 1, further comprising:

a bushing disposed on a bolt of the second geared shaft in contact with the first bracket, for dampening a rotation of the second geared shaft.

Claim 14. The apparatus of claim 1, further comprising:

a toilet seat and a toilet seat cover secured to the flange.

Claim 15. The apparatus of claim 1, further comprising:

a toilet having a bowl and a tank, the first geared shaft and the second geared shaft disposed between the tank and the bowl.

Claim 16. The apparatus of claim 1, further comprising:

a cover for enclosing the first geared shaft and the second geared shaft.

Claim 17. (canceled)

Claim 18. A toilet having a left side, a right side, a bowl disposed between the left side and the right side toward a front of the toilet, a toilet seat positioned over the bowl, and a tank disposed between the left side and the right side toward a rear of the toilet, the toilet further comprising:

a foot operated mechanism disposed between a tank and a bowl of the toilet, the foot operated mechanism comprising:

a first bracket disposed on the left side of the toilet;

a second bracket disposed on the right side of the toilet;

a first geared shaft disposed between the first and second brackets closer to the tank than the bowl and having a lever disposed on at least one side for providing torque to rotate the first geared shaft;

a second geared shaft disposed between the first and second brackets closer to the bowl than the tank and operatively engaged with the first geared shaft such that a rotation of the first geared shaft in a first direction causes a rotation of the second geared shaft in an opposite direction; and

a flange secured along the second geared shaft, the flange further attached to the toilet seat for adjusting a position thereof over the bowl in response to the rotation of the second geared shaft.

Claim 19. A method for adjusting a position of a toilet seat of a toilet having a left side, a right side, a bowl disposed between the left side and the right side toward a front of the toilet,

and a tank disposed between the left side and the right side toward a rear of the toilet, the method comprising:

depressing a foot operated lever to raise a toilet seat, the foot operated lever attached to a first geared shaft that rotates a second geared shaft, the first and second geared shafts disposed between the tank and the bowl of the toilet, the first and second geared shafts secured between a first bracket disposed on the left side of the toilet and a second bracket disposed on the right side of the toilet, the second geared shaft having a flange attached to the toilet seat; and

releasing the foot operated lever to lower the toilet seat.

(ix) Evidence Appendix

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(x) Related Proceeding Appendix

There are no separate proceedings related to this Appeal.